

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ROBERT E. HESS)
8415 Rainbow Road)
Vienna, Virginia 22182)
Plaintiff)
v.) Case No.
CAPSTONE ON-CAMPUS MANAGEMENT,)
LLC D/B/A EDGEWOOD COMMONS)
APARTMENTS)
431 Office Park Drive)
Birmingham, Alabama 35223)
Serve on:)
CSC-Lawyers Incorporating Service)
Company, Resident Agent)
7 St. Paul Street, Ste. 1660)
Baltimore, Maryland 21202)
and)
NCC BUSINESS SERVICES, INC.)
9428 Baymeadows Road, Ste. 200)
Jacksonville, Florida 32256)
Serve on:)
The Corporation Trust Incorporated,)
Resident Agent)
351 West Camden Street)
Baltimore, Maryland 21201)
Defendants)

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW the Plaintiff, Robert E. Hess, by and through his attorneys, Kevin M. Tracy and the law firm of McNamee, Hosea Jernigan, Kim, Greenan & Lynch, P.A., pursuant to the Declaratory Judgment Act, 22 U.S.C. 2201, *et seq.*, the Fair Debt Collections Practices Act,

15 U.S.C. 1692, *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*, and files the within Complaint against the Defendants, Capstone On-Campus Management, LLC d/b/a Edgewood Commons Apartments and NCC Business Services, Inc., and in support thereof states the following.

PARTIES

1. The Plaintiff, Robert E. Hess, is a resident of Virginia domiciled therein at 8415 Rainbow Road, Vienna, Virginia 22182 (hereinafter referred to as "Hess").

2. The Defendant Capstone On-Campus Management, LLC d/b/a Edgewood Commons Apartments is, upon information and belief, a limited liability company formed under the laws of Alabama, and has a place of business in Maryland located at One University Drive, Frostburg, Allegany County, Maryland 21532 (hereinafter referred to as "Edgewood Commons").

3. The Defendant NCC Business Services, Inc. is, upon information and belief, a stock corporation formed under the laws of Florida, and it has its principal place of business located at 9428 Baymeadows Road, Suite 200, Jacksonville, Florida 32256 (hereinafter referred to as "NCC").

COUNT I Declaratory Judgment

4. The Plaintiff, Hess, incorporates by reference each and every allegation contained in paragraphs 1 through 3 above.

5. The Plaintiff signed a Guaranty Agreement with respect to certain payment obligations of the tenant described in a Resident Housing Contract executed on July 24, 2009, by and between the Defendant Edgewood Commons and L. Rose (hereinafter referred to as "Tenant"), for a term of one (1) academic year at Frostburg State University. *See* Guaranty

Agreement attached hereto and incorporated herein by reference as Exhibit 1; *see also* Resident Housing Contract attached hereto and incorporated herein by reference as Exhibit 2.

6. On or about December of 2009, the Tenant withdrew as an enrolled student at Frostburg State University and terminated the lease in accordance with the Resident Housing Contract. *See* Exhibit 2, Resident Housing Contract at Section 16.

7. Thereafter, Defendant Edgewood Commons, and subsequently, Defendant NCC, instituted collections proceedings against the Plaintiff for the accelerated balance of rent allegedly accrued during the Spring Semester of the year 2010, during which time the Tenant neither attended Frostburg State University nor occupied the residences maintained by Edgewood Commons. *See* past due letter dated April 12, 2010, attached hereto and incorporated herein by reference as Exhibit 3.

8. The Plaintiff's guarantor's obligations under the Guaranty Agreement and Resident Housing Contract were extinguished on or about December of 2009 when the Tenant terminated the Resident Housing Contract, and they are no longer valid pursuant to their own express terms.

9. Therefore, the Plaintiff does not owe amounts sought for collection by the Defendants.

10. On multiple occasions, the Plaintiff has advised the Defendants that the Resident Housing Contract was properly terminated and that no guarantor's payment obligations apply to said terminated Resident Housing Contract.

11. As set forth in the allegations herein, a justiciable controversy exists regarding the validity of the Covenants.

12. The interest of the parties before the Court is adverse since the Defendants have refused to acknowledge the invalidity of the debt collection action, cease further collections activities, or cancel the invalid debt.

13. The controversy is ripe for adjudication since the Defendants have refused to acknowledge the invalidity of the debt collection action, cease further collections activities, or cancel the invalid debt, and continue to cause significant harm and monetary damage to the Plaintiff.

WHEREFORE, the Plaintiff, Robert E. Hess, demands an order of this Honorable Court declaring that the Guaranty Agreement and Resident Housing Contract were properly terminated prior to the accrual of any charges for which the Plaintiff, Robert E. Hess, would be liable under his guarantor's obligations; and as such, that the collection of the alleged debts associated therewith by the Defendants, Capstone On-Campus Management, LLC d/b/a Edgewood Commons Apartments and NCC Business Services, Inc., be declared void and of no further force or effect; and further, that the Defendants, Capstone On-Campus Management, LLC d/b/a Edgewood Commons Apartments and NCC Business Services, Inc., shall take affirmative action as necessary to delete any and all negative credit reporting information relayed to a credit reporting bureau or agency, and to remove any and all record of attempts to collect the alleged debt from the permanent record of the Plaintiff, Robert E. Hess; and for such other and further relief as this Honorable Court deems just, fair and necessary.

COUNT II
Unfair Debt Collection Practices

14. The Plaintiff, Hess, incorporates by reference each and every allegation contained in paragraphs 1 through 13 above.

15. The Plaintiff's guarantor's obligations under the Guaranty Agreement and Resident Housing Contract were extinguished on or about December of 2009 when the Tenant terminated the Resident Housing Contract, and they are no longer valid pursuant to their own express terms.

16. Therefore, the Plaintiff does not owe amounts sought for collection by Defendants, Edgewood Commons and NCC.

17. Furthermore, Defendant Edgewood Commons, and subsequently, Defendant NCC have provided the Plaintiff with an inaccurate statement of account reflecting the per-year charges in the Resident Housing Contract to total \$6,400.00 for the term of occupancy. *See* Lease Statement dated June 7, 2010, attached hereto and incorporated herein by reference as Exhibit 4. This is inaccurate as the Single Overflow Program Application for Participation—Addendum to Resident Housing Contract modified the Resident Housing Contract amount to total \$4,520.00. *See* Single Overflow Program Application for Participation dated July 21, 2009, attached hereto and incorporated herein by reference as Exhibit 5.

18. Despite demand for corrective, affirmative action, the Defendants have maintained an inaccurate debt collection action against the Plaintiff and caused significant harm and monetary damage to the Plaintiff as a result thereof. *See* dispute and demand letter to Edgewood Commons dated September 9, 2010, attached hereto and incorporated herein by reference as Exhibit 6.

19. Despite formal notice of dispute and demand for corrective credit reporting through counsel for the Plaintiff, to date the Defendants have failed to place the debt in dispute and have failed to take any corrective action.

20. The Defendants maintain an inaccurate debt collection action against Plaintiff, as set forth in the Fair Debt Collections Practices Act, codified at 15 U.S.C. §§ 1692 *et seq.* (hereinafter the “FDCPA”)

21. The Defendants, as creditors under the FDCPA, have failed to communicate that the debt is disputed.

22. The Plaintiff has suffered significant harm and monetary damage as a result of the Defendants’ continued attempts at debt collection and inaccurate negative credit reporting.

WHEREFORE, the Plaintiff, Robert E. Hess, demands judgment against Defendants, Capstone On-Campus Management, LLC d/b/a Edgewood Commons Apartments and NCC Business Services, Inc., in the amount of Ten Thousand Dollars (\$10,000.00) in actual damages, plus additional damages in the amount of One Thousand Dollars (\$1,000.00) with attorneys’ fees, interest and costs of this action, pursuant to the Fair Debt Collections Practices Act, 15 U.S.C. §§ 1692 *et seq.*; and for such other and further relief as this Honorable Court deems just, fair and necessary.

COUNT III
Inaccurate Credit Reporting

23. The Plaintiff, Hess, incorporates by reference each and every allegation contained in paragraphs 1 through 22 above.

24. Despite formal notice of dispute and demand for corrective credit reporting through counsel for the Plaintiff, to date the Defendants, Edgewood Commons and NCC, have failed to place the debt in dispute and have failed to take any corrective action.

25. The Defendants maintain an inaccurate credit report against the Plaintiff, as set forth in the Fair Credit Reporting Act, codified at 15 U.S.C. §§ 1681 *et seq.* (hereinafter the “FCRA”).

26. The Defendants, as creditors under the FCRA, have failed to communicate that the debt is disputed.

27. The Plaintiff has suffered significant harm and monetary damage as a result of Defendants' continued attempts at debt collection and inaccurate negative credit reporting.

WHEREFORE, the Plaintiff, Robert E. Hess, demands judgment against Defendants, Capstone On-Campus Management, LLC d/b/a Edgewood Commons Apartments and NCC Business Services, Inc., in the amount of Ten Thousand Dollars (\$10,000.00) in actual damages, plus additional damages in the amount of One Thousand Dollars (\$1,000.00) with attorneys' fees, interest and costs of this action, pursuant to the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*; and for such other and further relief as this Honorable Court deems just, fair and necessary.

ROBERT E. HESS

By his attorneys,



Kevin M. Tracy, Esq. (Fed. Bar #14025)
McNamee, Hosea, Jernigan, Kim
Greenan & Lynch, P.A.
888 Bestgate Road, Suite 304
Annapolis, MD 21401
(410) 266-9909 Telephone

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